SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

12/21/1999

CLERK OF THE COURT
Form V000

HONORABLE SUSAN R. BOLTON

M.K. SMITH
Deputy

CV99-013055

FILED: DEC 23 1999

TRICITY BEHAVIORAL HEALTH SERVICES INC.

v.

COMCARE, INC., ET AL

JEFFREY C. BRODIN #09937
JENNIFER A. SPARKS #17502

DON D. SKYPECK #11720
JAMES R. TAYLOR #14064

LOGAN T. JOHNSTON
1 N. FIRST ST SUITE 700
PHOENIX AZ 85004

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MINUTE ENTRY

The primary question raised in this review of an administrative decision by the Director of AHCCCS is whether Defendant Comcare is responsible for the payment of co-insurance and deductibles for Medicare covered services provided by Tricity Behavioral Health Services, Inc., which services are not covered under the AHCCCS plan. At the time this matter proceeded to hearing, Medicare and AHCCCS had both reached the conclusions that these co-insurance and deductibles were AHCCCS responsibilities rather than Medicare responsibilities. The issue is whether they are also the responsibility of Comcare.

The services provided by Tricity were mental health services covered by Medicare. Pursuant to A.R.S. Section 36-2907 and A.C.C.R. 9-22-1203 (A), the Arizona Department of Health Services is responsible for the provisions of all behavioral health services covered under the AHCCCS plan. Pursuant to that same regulation, the Arizona Department of Health Services is required to contract with regional behavioral health authorities (in this case Comcare) forth

the provision of behavioral health services set forth in A.C.C. R. 9-22-1204 defines covered behavioral health services for eligible persons and members and includes the requirement that the service be medically necessary, cost effective, and Title 19 reimbursable. Title 19 refers to Medicaid, or in the State of Arizona, to the AHCCCS plan.

In this case the behavioral health services provided by TriCity were not Title 19 covered services. Bu the State plan for Arizona requires that AHCCCS will pay the full Medicare deductible and co-insurance amounts for Medicare covered services for those individuals who are both Medicare and AHCCCS qualified. The claims at issue in this case all fall within this category. The individuals who were provided services for which Tricity seeks co-insurance and deductible payments are all individuals who are both Medicare eligible and AHCCCS eligible.

The contract between AHCCCS and the Arizona Department of Heath Services also requires the Department of Heath Services to be responsible for these co-insurance and deductible amounts. The Arizona Department of Heath

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Services' contract with AHCCCS is not part of this record.

A portion of that contract is quoted in the December 30, 1998 letter to Tricity from Branch McNeal of AHCCCS. The quoted portion of that contract makes clear that for all dual eligible persons the Arizona Department of Heath Services or its subcontractors are responsible to pay all Medicare co-insurance and deductibles for Medicare services not covered by AHCCCS.

It is therefore plain that the AHCCCS plan is responsible for the co-insurance and deductible amounts sought by Tricity and that the Department of Health Service's contract with AHCCCS shifts that responsibility to the Arizona Department of Health Services. What is not clear from the record is whether the Arizona Department of Health Services in its subcontract with Comcare shifted that responsibility to Comcare. Neither the statute nor the regulation makes clear that this responsibility has been shifted from the Arizona Department of Health Services to the regional behavioral health authority. That shift, if it occurred, occurred in the contract executed by the Arizona

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Department of Health Services and Comcare which is not a part of the record. When the Director concluded, based on the hearing officers findings, that this (the responsibility for co-insurance and deductibles) appears to have been included as part of AHCCCS'S contract with the Arizona Department of Health Services and its subcontractors regarding the provision of mental health services, the Court assumes it was referring to the quoted portion of the contract between AHCCC and the Arizona Department of Health Services. That quoted portion was not a mandate that the ADHS subcontractors be responsible. The contract language quoted in the December 30, 1998, letter was stated in the disjunctive.

On the Court's own Motion and pursuant to the authority provided in A.R.S. Section 12-910,

IT IS ORDERED that Defendant Comcare and/or AHCCCS provide to this Court a copy of the Comcare contract with the Arizona Department of Health Services. In addition, the parties will have until Friday, January 14, 2000, to file Supplemental Memoranda not exceeding 5 pages covering the issue addressing whether any of these contract

provisions shifted the responsibility of the payment of the co-insurance and deductible amounts from the Arizona Department of Health Services to Comcare. The filing of such Memoranda is not limited to Tricity and Comcare. AHCCCS may file a Memoranda as well since it is AHCCCS who has taken the position that it is Comcare's responsibility pursuant to the ADHS contract.

Until this matter is resolved the Court will not address the issue of the audit (which will become moot if ComCare is not responsible for the co-insurance and deductible amounts) or the issues with regard the statute of limitations provided in ACCR 9-22-804 (B3).